

Taylor IV, William - BALTO

From: Robert.Kelly [Robert.Kelly@wellpoint.com]
Sent: Monday, July 23, 2001 6:56 PM
To: 'jay.smith@piperrudnick.com'; 'william.taylor@piperrudnick.com';
'billie.grieb@piperrudnick.com'
Cc: Thomas.Geiser; Robert.Glaser; Carol.Burt; 'g_horowitz@stblaw.com';
't_jamacchia@stblaw.com'; Robert.Kelly; William.Palmer
Subject: Project Congress



Congress_Article.doc



Congress_Section6.1.doc



Congress_SubNote.doc

Jay, Billie and Will:

Attached please find a revised Section 6.1 and new Article that were previously part of Jay's e-mail of June 22. Both documents have been marked to show the changes from the versions attached to Jay's e-mail. Please note that, since they are the subject of separate conversations, I have not marked the "Management Responsibility" and "Employee Benefits" sections of the new Article.

I am also sending a proposed form of Subordinated Note. I believe that you will find the note consistent with the term sheet previously sent to you.

I would appreciate if you forward this e-mail to John Picciotto.

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This e-mail message is for the sole use of the intended recipient(s) and may contain confidential and privileged information.

ARTICLE ____ - ADDITIONAL AGREEMENTS

Section ____, Transaction Objectives

After the closing, CareFirst and the Purchaser shall use their respective best efforts to achieve the following objectives:

- (i) create an enterprise that reflects and takes advantage of the proportionate strengths, contributions, resources and prospects of each of the Parties in a logical, progressive step consistent with sound business practice;
- (ii) enhance the offering of competitive Blue Cross Blue Shield and other related health care products for Delaware, the District of Columbia, Maryland, Virginia and any other jurisdiction which may come under CareFirst's control pursuant to Section ____ herein;
- (iii) provide to a significant portion of the workforce of BCBSD, CFMI and GHMS continued employment within each company's current service area, as well as opportunities for employment with other of the Parties within the entire area serviced by the Parties, collectively;
- (iv) create a collective enterprise which will provide additional financial strength for the customers of each of the Parties, will allow each of the Parties access to necessary capital to support strategic initiatives and will position the collective enterprise as a more significant regional competitor;
- (v) allow BCBSD, GHMSI, CFMI and CFI to continue as separate corporations subject to local regulation and with a significant level of local operational control; and
- (vi) create an organizational structure for BCBSD, CFMI and GHMSI that retain key employees of each.

In lieu of the above proposed language, the following language would be added to the recitals of the Agreement and Plan of Merger: "A merger of CFAC with and into CareFirst would enable Purchaser and CareFirst to take advantage of the other's strengths and resources and would result in a collective enterprise financially stronger than CareFirst, better able to serve the customers in CareFirst's region and better able to provide superior opportunities to employees of CareFirst."

Section _____. Significant Local Presence

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After the Closing, CareFirst and the Purchaser shall cause, allow and assist BCBSD, GHMSI and CFMI to continue to maintain ~~a significant presence within their respective jurisdictions, including the operation of facilities located in each jurisdiction, the maintenance of the corporate headquarters of each within their respective jurisdictions and the provision of products and services to residents in their respective jurisdictions.~~

Section _____. Board Representation

Effective as of Closing, the Purchaser (after consultation with CareFirst) will nominate for election one non-employee member of the existing Board of Directors of the CareFirst designated ~~by the Board of CareFirst~~ to serve on the Purchaser's Board of Directors and will use Best Efforts to have the CareFirst designee appointed or elected to the Purchaser's Board of Directors. ~~In the event that at that time, the Purchaser's Board of Directors shall have one or more classes of directors which have fewer members than one or more other classes of directors, the CareFirst designee shall be nominated to whichever class with fewer directors provides for the longest initial term for the CareFirst director.~~

Section _____. Advisory Boards

An Advisory Board will be formed for each of GHMSI, CFMD and BCBSD. Each person who serves as a director of one those companies at Closing will, subject to such person's acceptance of such appointment, serve on the Advisory Board for that Company, and the current directors of CareFirst who do not currently serve on the Board of GHMSI, CFMD or BCBSD will, subject to such person's acceptance of such appointment, be appointed to serve on one of the Advisory Boards, as designated by CareFirst. Each Advisory Board will provide guidance to its respective company regarding the company's relationship with subscribers (both group and non-group) providers and the general public. Each director appointed to an Advisory Board shall serve for a term of two years from the Closing on the same terms and conditions currently applicable to such person's ~~current~~ service on the Board of Directors of CareFirst, GHMSI, CFMD or BCBSD as of the date of this Agreement.

Section _____. Management Responsibility [To be addressed separately]

[Covenant to be included describing Mr. Jew's title and responsibilities consistent with understanding he will be in charge of eastern region, including Georgia.]

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Section ____ . Employee Benefits [To be addressed separately]

CareFirst and the Purchaser agree and covenant as follows:

(a) Except to the extent provided in subparagraph (b) of this Section, Purchaser and the CareFirst Companies shall not terminate or amend any "employee benefit plan" (as defined in Section 3(3) of ERISA), any employment agreement, or any other plan, agreement, program, policy or arrangement providing, directly or indirectly, compensation or benefits (including, without limitation, severance or incentive benefits, sick leave, vacation pay, salary continuation for disability, post-retirement benefits), which is sponsored, maintained or contributed to by a CareFirst Company, or with respect to which a CareFirst Company has any obligation to make contributions or to fund the compensation or benefits, for current or former employees, directors or consultants of any CareFirst Company (collectively, the "CareFirst Plans").

(b) With respect to each person who is employed by a CareFirst Company or is covered by or eligible to participate in such CareFirst Plan, as of the Closing Date (the "Current CareFirst Employee"), a CareFirst Plan may be amended or terminated only to the extent such amendment or termination does not adversely affect (i) the aggregate benefits of the type provided under such CareFirst Plan or (ii) the rights of such Current CareFirst Employee and the beneficiaries thereof with respect to such benefits. With respect to other persons who become employees of the CareFirst Companies after the Closing Date (the "Future CareFirst Employees"), the chief executive officer for Purchaser's eastern region shall have the exclusive authority to amend or terminate any CareFirst Plan, and to adopt, on behalf of the Purchaser and/or the CareFirst Companies, any other "employee benefit plans" (as defined in Section 3(3) of ERISA), employment agreements, or plans, agreements, programs, policies or arrangements providing, directly or indirectly, compensation or benefits, all at his sole discretion based on such factors as he determines to be appropriate, including, without limitation, the prevailing levels of compensation and benefits in the competitive market.

(c) Purchaser acknowledges that CareFirst is subject to certain existing agreements under its Business Affiliation Agreement dated as of December 23, 1998 with BCBSD, including agreements set forth in Section 7.5 thereof relating to benefit plans and compensation matters and agrees to be bound by the terms of such agreements.

(d) The agreements and covenants in this Section ____ shall survive the Closing and are intended to benefit Purchaser, the CareFirst Companies, the Current CareFirst Employees and the beneficiaries thereof, each of whom shall have the right to individually enforce this Section. No provision of this Section shall create any third party beneficiary rights in any person to continued employment or resumed employment with Purchaser or any CareFirst Company.

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ARTICLE VI

Covenants Of The Parties

The parties covenant as provided in this Article VI, except as expressly set forth in the Schedules or as contemplated herein:

Section 6.1. Pre-Closing Operations.

(a) CareFirst. CareFirst hereby covenants and agrees that, pending the Closing, (for purposes of the following, "CareFirst" shall be deemed to include the CareFirst Subsidiaries):

- (i) except as approved by the Transition Team or otherwise consented to by Purchaser, CareFirst will operate and conduct its business only in the ordinary course in accordance with prior practices, shall maintain its assets in their present state of repair (ordinary wear and tear excepted), and shall use its Best Efforts to keep available the services of its employees and preserve the goodwill of its business and relationships with the customers, licensors, suppliers, distributors and brokers with whom it has business relations;
- (ii) except as approved by the Transition Team or otherwise consented to by Purchaser, CareFirst shall not: [Subject to discussion.]

[Note: The following language will be included in the CareFirst Disclosure Schedule: Section 6.1 shall not prevent or preclude CareFirst from entering into or renewing any contract or commitment with customers or providers in the ordinary course of business consistent with past practice, excluding customer contracts with multi-year rate guarantees or contracts involving an annual premium or administrative services fees in excess of \$2,55,000,000.]

- (A) sell, transfer or otherwise dispose of any assets, except for sales, transfers or disposals which would not have a CareFirst Material Adverse Effect;
- (B) enter into any new material contract or commitment relating to its business, with "material contract or commitment" being defined for the purpose of this subsection as a contract or commitment which involves CareFirst incurring a liability in excess of \$5 million individually or \$20 million in the aggregate for any 12-month period or which involves a fee, rate or performance guarantee applicable to a period longer than 12 months (excluding any contract with such guarantee where the contract involves the payment of no more than [\$250,000]);

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- (C) mortgage, pledge or subject to liens or other encumbrances or charges any assets, except by incurring CareFirst Permitted Liens;
- (D) purchase or commit to purchase any capital asset outside of the relevant CareFirst Company capital plan for a price exceeding \$5 million individually or \$25 million in the aggregate per calendar year;
- (E) ~~terminate or amend or terminate~~amend in any material respect any CareFirst Material Contract or any insurance policy, in force on the date hereof;
- (F) amend its charter or bylaws (provided, however, the foregoing will in no way limit the actions which are required to be taken by CareFirst pursuant to Section 6.8);
- (G) acquire (whether by merger, consolidation, share exchange, acquisition of stock, or acquisition of assets) any corporation, partnership, joint venture, or other business (or any part thereof), except where the consideration paid by CareFirst in connection with such acquisition (including any debt assumed as a result thereof) is less than \$5 million individually or \$125 million in the aggregate in any calendar year;
- (H) split, combine or reclassify its outstanding capital stock or declare, set aside or pay any dividend or distribution payable in cash, stock, property or otherwise, except for payments or distributions by a wholly-owned subsidiary of CareFirst to CareFirst;
- (I) except for the issuance of CareFirst Common Stock to the Tax-Exempt Entities in connection with the Conversion, issue, sell, pledge or dispose of, or agree to issue, sell, pledge or dispose of or otherwise cause to become outstanding any additional shares of or any options, warrants or rights of any kind to acquire any shares of its capital stock of any class or any debt or equity securities convertible into or exchangeable for such capital stock;
- (J) incur or become contingently liable with respect to any indebtedness for borrowed money or purchase money indebtedness, other than borrowings under CareFirst's revolving credit facility not to exceed an aggregate principal amount of \$230 million;
- (K) modify its current investment policies or practices in any material respect except to accommodate changes in applicable law;

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- (L) materially change its methods of accounting in effect at December 31, 2000, except as required by changes in GAAP or SAP;
- (M) enter into any Affiliate Transaction in excess of \$250,000, other than on terms no less favorable than those applicable to unaffiliated third parties, a continuation of those Affiliate Transactions set forth on Schedule 6.1 [CareFirst to supply list of existing relationships];
- (N) (1) change the compensation of its employees, except in the ordinary course of business consistent with past practices, or change in any material respects the methodology for calculating incentive payments to its employees; (2) enter into or modify any severance agreement, plan or arrangement with any employee, except with regard to non-executive employees in the ordinary course of business consistent with past practices prior to January 1, 2001; or (3) adopt or materially change any Benefit Plan, excluding any amendments to any Benefit Plans required by law;
- (O) materially expand or alter its geographical service area or sell products or services materially different from those currently sold or provided by the CareFirst Companies;
- (P) settle or compromise any pending or threatened suit, litigation or similar proceeding for an amount in excess of \$2 million or that would result in material ongoing restrictions on the conduct of business of CareFirst; or
- (Q) materially change its underwriting practices or policies (except as may be required to comply with law) without Purchaser's prior written consent (which will not be unreasonably withheld); or
- (RQ) enter into, or agree to enter into, any agreement to do any of the foregoing.

~~(iii) CareFirst will consult with the Purchaser regarding any material change to its underwriting practices and policies or the sale of products or services materially different from those currently sold or provided by the CareFirst Companies; and~~

(iii+) CareFirst shall obtain Purchaser's prior written consent to its annual capital plan prior to adoption by CareFirst's Board of Directors.

(b) Purchaser or Transition Team Consent. In the event CareFirst seeks the approval or consent of the Purchaser or the Transition Team for any action under Section 6.1(a), the proposed action shall be deemed approved or consented to by the Purchaser or the Transition

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